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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,156	08/20/2004	Kenji Taguchi	71912-011	5699

7590 11/30/2006  
McDermott Will & Emery  
600 13th Street N W  
Washington, DC 20005-3096

EXAMINER
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SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/505,156

Applicant(s)

TAGUCHI ET AL.

Examiner

Robert G. Santos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/16/2006, 8/30/2006 and on 11/14/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-23 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 15/1-20/1, 15/3-20/3, 15/4-20/4 and 15/5-20/5 is/are rejected.
- 7) ☒ Claim(s) 2, 6-12, 15/2-20/2, 15/6-15/12, 16/6-16/12, 17/6-17/12, 18/6-18/12, 19/6-19/12 and 20/6-20/12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060816, 20061114</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,500,964 to Bergersen. Bergersen '964 shows the claimed limitations of an adjustable bed comprising a platform (30) having a flexible surface; a flex mechanism (as described in column 4, lines 51-52) adapted to flex the platform to form a flexion position that includes at least one of a sitting-up position (as shown in Figures 3 & 8) and a knee break; and a tilt mechanism (80, 90) adapted to laterally tilt the platform surface corresponding to an area from an upper body to a lower leg of a bed user lying on the platform surface (which is dependent upon the size of a user positioned upon the platform surface), wherein the flex and tilt mechanisms are both operable with the other mechanism in an operational state (as shown in Figure 8 and as described in column 7, lines 5-21). As concerns claims 3 and 4, the reference is considered to show a condition wherein the flex mechanism forms the flexion position so that an upper leg of a bed user lying on the platform surface is tilted at an angle in a range of 10 degrees to 60 degrees inclusive at a time of the knee break (as shown in Figure 4). With regards to claim 5, the reference discloses a condition wherein the tilt mechanism is operable after the flexion position is formed by the flex mechanism (as described in column 7, lines 5-21).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15/1, 16/1, 15/3-15/5 and 16/3-16/5 rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen '964 in view of U.S. Pat. No. 5,224,228 to Larrimore. Bergersen '964 does not specifically disclose the use of a mattress positioned on the platform and provided with a slit. Larrimore '228 provides the basic teaching of an articulated platform (11) having a mattress (72) positioned thereon, wherein the mattress includes a slit (73) formed in its lower surface in order to allow for unimpeded movement of the platform. The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bergersen '964 with a mattress positioned atop the platform and provided with a slit in order to provide enhanced user comfort.

5. Claims 17/1 and 17/3-17/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen '964 in view of U.S. Pat. No. 5,400,448 to Zwickey. Bergersen '964 does not specifically disclose the use of a mattress comprising an alignment mark formed on a mattress surface. Zwickey '448 provides the basic teaching of a mattress (10) comprising indicia (28) formed on a top surface (20) thereof. The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bergersen '964 with an alignment mark formed on a mattress surface in order to indicate medical procedures which may be associated

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with the mattress as desired; furthermore, the placement of indicia upon a mattress surface would have also been generally recognized as being within the level of ordinary skill in the art.

6. Claims 18/1 and 18/3-18/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen '964 in view of U.S. Pat. No. 1,559,119 to Miller. Bergersen '119 does not specifically disclose the use of a mattress including a fixed implement provided on a mattress surface. Miller '119 provides the basic teaching of a mattress (11) provided with means (17) for attachment to the side bars (18) of an underlying frame. The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bergersen '964 with a mattress including a fixed implement provided on a mattress surface in order to ensure that the mattress remains securely in place as the platform is flexed or tilted, thereby helping to ensure enhanced user comfort.

7. Claims 19/1 and 19/3-19/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen '964 in view of U.S. Pat. No. 3,474,781 to Gaylord, Jr. Bergersen '964 does not specifically disclose the use of a body-position fitting comprising a holding unit adapted to hold the bed user in a posture with hands corresponding to an abdominal region of the bed user. Gaylord, Jr. '781 provides the basic teaching of a bed (14) provided with a body-position fitting (10) comprising a holding unit (25, 25') adapted to hold the bed user in a posture with hands corresponding to an abdominal region of the bed user (as shown in Figure 1). The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bergersen '964 with a body-position fitting comprising a holding unit adapted to hold the bed

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user in a posture with hands corresponding to an abdominal region of the bed user in order to “quickly, safely, secure and comfortably” secure the user to the bed “without the necessity of restraining the mobility of the [user’s] head and legs” as desired (see column 1, lines 50-53).

8. Claims 20/1 and 20/3-20/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen ‘964 in view of U.S. Pat. No. 5,878,453 to Stokes. Bergersen ‘964 does not specifically disclose the use of a decubitus-ulcer prevention fitting comprising a cushioning unit adapted to be interposed between legs of the bed user. Stokes ‘453 provides the basic teaching of a bed (34) provided with a decubitus-ulcer prevention fitting (10) comprising a cushioning unit (14) adapted to be interposed between legs of the bed user (28) (as shown in Figure 4). The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bergersen ‘964 with a decubitus-ulcer prevention fitting comprising a cushioning unit adapted to be interposed between legs of the bed user in order to “alleviate lower back pain” of a user lying on the bed, thereby helping to provide enhanced user comfort.

***Response to Amendment***

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

10. Claims 21-23 are allowed.

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11. Claims 2, 6-12, 15/2-20/2, 15/6-15/12, 16/6-16/12, 17/6-17/12, 18/6-18/12, 19/6-19/12 and 20/6-20/12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Larson et al. '994, Ooyama et al. '210, Weinman '396, Humbles '749, Ooyama et al. '281, Bamdad et al. '050, Frydman '577, Frydman '314, Frydman '905, Swedberg et al. '457, Edge '218, Vinci '121, Gaffe et al. '739, Engle '123, Everett '522, Grabill et al. '818, Galumbeck '404, Hoshall '083, Lagin '601, Tari '366, Fixel '299, Spann '504, Nishiyama et al, '666, Albinson '762, Lang '854 and Leeking '873.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
November 16, 2006